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3 **UNITED STATES DISTRICT COURT**

4 **DISTRICT OF NEVADA**

5 ***

6 ELISSA SPEER,

7 v.
8 Plaintiff,

9 JEREMY MONDEJAR,

10 Defendants.

11 2:21-cv-01355-RFB-VCF
12 **ORDER**

13 Before the court is Defendant Jeremy Mondejar's motion to stay discovery pending the court
14 decision on defendant's motion to dismiss plaintiff's complaint (ECF NO. 35).

15 **LEGAL STANDARD**

16 When evaluating a motion to stay discovery while a dispositive motion is pending, the court
17 initially considers the goal of Federal Rule of Civil Procedure 1. The guiding premise of the Rules is that
18 the Rules "should be construed, administered, and employed by the court and the parties to secure the just,
19 speedy, and inexpensive determination of every action and proceeding." FED. R. CIV. P. 1. It needs no
20 citation of authority to recognize that discovery is expensive. The Supreme Court has long mandated that
21 trial courts should resolve civil matters fairly but without undue cost. *Brown Shoe Co. v. United States*,
22 370 U.S. 294, 306 (1962). This directive is echoed by Rule 26, which instructs the court to balance the
23 expense of discovery against its likely benefit. *See* FED. R. CIV. P. 26(B)(2)(iii).

24 Consistent with the Supreme Court's mandate that trial courts should balance fairness and cost,

1 the Rules do not provide for automatic or blanket stays of discovery when a potentially dispositive motion
 2 is pending. *Skellerup Indus. Ltd. v. City of Los Angeles*, 163 F.R.D. 598, 600–01 (C.D. Cal. 1995).
 3 Pursuant to Federal Rule of Civil Procedure 26(c)(1), “[t]he court may, for good cause, issue an order to
 4 protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”
 5 Whether to grant a stay is within the discretion of the court. *Munoz–Santana v. U.S. I.N.S.*, 742 F.2d 561,
 6 562 (9th Cir. 1984). The party seeking the protective order, however, has the burden “to ‘show good cause’
 7 by demonstrating harm or prejudice that will result from the discovery.” FED. R. CIV. P. 26(c)(1).
 8 Satisfying the “good cause” obligation is a challenging task. A party seeking “a stay of discovery carries
 9 the heavy burden of making a ‘strong showing’ why discovery should be denied.” *Gray v. First Winthrop*
 10 *Corp.*, 133 F.R.D. 39, 40 (N.D.Cal.1990) (*citing Blankenship v. Hearst Corp.* 519 F.2d 418, 429 (9th Cir.
 11 1975)).

12 Generally, imposing a stay of discovery pending a motion to dismiss is permissible if there are no
 13 factual issues raised by the motion to dismiss, discovery is not required to address the issues raised by the
 14 motion to dismiss, and the court is “convinced” that the plaintiff is unable to state a claim for relief. *Rae*
 15 *v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984); *White v. Am. Tobacco Co.*, 125 F.R.D. 508 (D. Nev.
 16 1989) (*citing Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981) cert. denied, 455 U.S. 942 (1982)).
 17 Typical situations in which staying discovery pending a ruling on a dispositive motion are appropriate
 18 would be where the dispositive motion raises issues of jurisdiction, venue, or immunity. *TradeBay, LLC*
 19 *v. Ebay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011).

20 Courts in the District of Nevada apply a two-part test when evaluating whether a discovery stay
 21 should be imposed. *Id.* First, the pending motion must be potentially dispositive of the entire case or at
 22 least the issue on which discovery is sought. *Id.* Second, the court must determine whether the pending
 23 motion to dismiss can be decided without additional discovery. *Id.* When applying this test, the court must
 24 take a “preliminary peek” at the merits of the pending dispositive motion to assess whether a stay is
 25

1 warranted. *Id.* The purpose of the “preliminary peek” is not to prejudge the outcome of the motion to
2 dismiss. Rather, the court’s role is to evaluate the propriety of an order staying or limiting discovery with
3 the goal of accomplishing the objectives of Rule 1.

4 **DISCUSSION**

5 Under Local Rule 7-2(d), the failure of an opposing party to file points and authorities in response
6 to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a
7 consent to the granting of the motion. No opposition has been filed and the time to file an opposition has
8 passed. Here, it seems as though plaintiff has consented to the granting of the instant motion.

9 Additionally, good cause exists to grant Defendant’s motion to stay. After a “preliminary peek”
10 and in light of the goals of Rule 1 to “secure the just, speedy, and inexpensive determination of every
11 action and proceeding,” the Court finds that defendant’s motion has merit and may resolve all or a number
12 of issues in controversy and demonstrates good cause to stay discovery. The motion to dismiss can
13 potentially be dispositive of all claims. The parties will not need to incur unnecessary discovery costs
14 during the pendency of the motion to dismiss. *See* FED. R. CIV. P. 1.

15 Accordingly, and for good cause shown,

16 IT IS HEREBY ORDERED that Defendant Jeremy Mondejar’s motion to stay discovery pending
17 the court decision on defendant’s motion to dismiss plaintiff’s complaint (ECF NO. 35), is hereby
18 GRANTED. In the event resolution of Defendant Jeremy Mondejar’s motion to stay discovery pending
19 the court decision on defendant’s motion to dismiss plaintiff’s complaint (ECF NO. 35) does not result in
20 the disposition of this case, the parties must file a new joint discovery plan within 21 days of the issuance
21 of the order deciding that motion.

22 DATED this 4th day of May 2023.


23

CAM FERENBACH
24 UNITED STATES MAGISTRATE JUDGE
25